

89-1850

Supreme Court, U.S.  
FILED

MAY 29 1990

JOSEPH F. SPANIOL, JR.  
CLERK

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

GEORGE M. AND FERRELL S. HORN  
PETITIONERS

V.

SMITH & MERONEY, P.C.  
RESPONDENT

APPENDIX TO THE  
PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT AND COURT OF  
APPEALS OF GEORGIA

GEORGE M. HORN, PRO SE

AND

FERRELL S. HORN, PRO SE

COUNSEL OF RECORD

308 Brookside Dr.  
Auburn, AL 36830  
(205) 821-3616



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APPENDIX A

SUPREME COURT OF THE STATE OF GEORGIA  
CLERK'S OFFICE  
ATLANTA

DATE: MARCH 1, 1990

GEORGE M. HORN  
308 BROOKSIDE DRIVE  
AUBURN, AL 36830

Case No. S90C0628

GEORGE HORN ET AL. V. SMITH AND MERONEY, P.C.,  
ET AL

COURT OF APPEALS CASE NO. A89A1923

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Very truly yours,

JOLINE B. WILLIAMS, Clerk

APPENDIX BCOURT OF APPEALS  
OF THE STATE OF GEORGIA

ATLANTA

JANUARY 23, 1990

The Honorable Court of Appeals met pursuant to adjournment.  
The following order was passed:

A89A1923. GEORGE HORN ET AL v. SMITH AND MER-  
ONEY, P.C. ET AL

Upon consideration of the motion for a rehearing filed in this  
case, it is ordered that it be hereby denied.

COURT OF APPEALS  
OF THE STATE OF GEORGIA  
CLERK'S OFFICE, ATLANTA  
JANUARY 23, 1990

I certify that the above is a true extract from the minutes  
of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto  
affixed the day and year last above written.

VICTORIA MCLAUGHLIN  
CLERK

APPENDIX C

CARLEY, C.J.  
McMURRAY, P.J., & BEASLEY, J.

In the Court of Appeals of Georgia

A89A1923. HORN et al. v. SMITH AND MERONEY, P.C. et al.

CARLEY, Chief Judge.

When Mr. George Horn died in an airplane crash, he was survived by his wife and by appellant-plaintiffs, his parents. His wife secured the legal services of appellee-defendants to bring a wrongful death action. After the wrongful death claim was settled, appellants filed this legal malpractice action against appellees, alleging a deviation from the applicable standard of care in pursuing the wrongful death claim. Appellees answered and subsequently moved for summary judgment. The trial court granted appellees' motion and appellants appeal.

1. ““It is generally held that an attorney-client relationship must be demonstrated before a plaintiff may recover in a legal malpractice suit .... This is essential in establishing the element of duty that is necessary to every lawsuit based upon a theory of negligence ....” Accordingly, the threshold question in the case sub judice is whether or not there was an attorney-client relationship’ between the appellants and [appellees]. [Cit.]” Moore v. Harris, 188 Ba. App. 251, 252 (372 SE2d 654) (1988).

“The relationship of attorney-client may be expressly created by written contract, or may be inferred from the conduct of the parties. [Cit.] Although ‘[g]enerally, the test of employment is the fee,’ [cits.], the basic question in regard to the formation of the attorney-client relationship is whether it has been sufficiently established that advice or assistance of the attorney is both sought and received in matters pertinent to his profession. [Cit.] “Huddleston v. State, 259 Ga. 45, 46-47 (1) (376 SE2d 683) (1989). In

their depositions, appellants acknowledged that they never paid any legal fees to appellees and never sought any legal advice from them. Likewise, appellants never informed appellees that they were relying upon them for legal advice, and they admit that they have always understood that appellees were the legal representatives of their son's widow. Except for one brief period of time, appellants have been represented by counsel of their own choosing in connection with their legal rights as surviving parents of their deceased son. This, "[t]he evidence demanded a finding that no attorney-client relationship existed, ... in the classic sense of the term. [Cit.] Moore v. Harris, supra at 252-253. It follows that the trial court correctly granted summary judgment in favor of appellees.

2. Appellants remaining enumerations of error have been considered and found to be either moot or without merit.

Judgment affirmed. McMurray, P.J., and Beasley, J., concur.



APPENDIX DIN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIAGEORGE HORN, et al.,  
Plaintiffs

vs.

SMITH & MERONEY, P.C., a  
professional corporation, et al.,

Defendants

## ORDER ON MOTIONS

1. Plaintiffs' motion for stay of proceedings. Plaintiffs' motion for stay of proceedings, filed July 18, 1988, is denied.

2. Defendants' motion for summary judgment. This court has concluded that there are no genuine issues of material fact and that defendants are entitled to judgment as a matter of law.

The plaintiffs are pro se. While the facts of this case are somewhat convoluted, the evidence shows that defendants were retained to represent the plaintiffs' daughter-in-law in connection with certain legal matters growing out of the death of the plaintiffs' son. The plaintiffs have filed this action alleging legal malpractice. However, the evidence fails to support plaintiffs' claims.

It is clear from the record that no attorney-client relationship ever existed between the plaintiffs and the defendants. Additionally, it is clear from the record that the defendants acted with the requisite degree of care, skill and diligence in their representation of plaintiffs' daughter-in-law. Also, from the record this court has concluded that no act or omission by the defendants proximately

For the foregoing reasons, defendants' motion for summary judgment is granted.

This 6th day of September, 1988.

William H. Alexander  
Judge

APPENDIX E

ALABAMA CODE - §43-8-41 et seq

Intestacy succession and descent and distribution.

APPENDIX FALABAMA CODE - § 6-5-410

Wrongful act, omissions or negligence causing death (A) a personal representative may commence an action and recover such damages as the jury may assess in a court of competent jurisdiction within the State of Alabama and not elsewhere for the wrongful act omission or negligence of any person, persons or corporation, his or their servants or agents whereby the death of the testator or intestator was caused, provided the testator or the intestator could have commenced the action for such wrongful act, omission or negligence if it had not caused death.

APPENDIX GGEORGIA CODE 1981 § 51-4-2 (105-1308)

Wrongful death - full value of life of the decedent as shown by the evidence defined.

APPENDIX HGEORGIA CODE 1981 § 53-4-1

Rules of distribution - after the payment of the expenses of administration and the debts of the decedent, the balance of the estate both real and personal, shall stand subject to distribution among the heirs at law of the decedent, according to the rules prescribed by law.

CERTIFICATE OF SERVICE

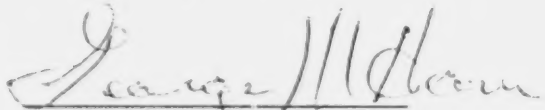
We, George M. Horn and Ferrell S. Horn, hereby certify that three true and correct copies of the foregoing APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI has been served on:


Karen B. Bragman  
ARNALL, GOLDEN & GREGORY  
55 Park Place, Fourth Floor  
Atlanta, GA 30335

by depositing the same in the United States mail in a properly addressed envelope with sufficient postage.

This 26<sup>th</sup> day of May 1990.

Respectfully submitted

  
George M. Horn, Pro Se

  
Ferrell S. Horn, Pro Se

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